
**COURT & CLERK RECORDS:
ACCESS & MAINTENANCE**

**PUBLIC ACCESS TO MICROFILMED
RECORDS CONTAINING EXPUNGED
CASE RECORDS**

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Since July 1, 2012 various statutes have been in effect that allow Indiana courts to restrict or seal criminal case records from public access.¹ In the case of old records that have been preserved in bulk batches using an un-editable medium such as microfilm, however, trial courts and clerks must develop new procedures by which access to case records that have been removed from public access is prevented while still allowing access to all case records that remain publicly accessible.

Under [Ind. Administrative Rule 9\(J\)](#), a court, court agency, or clerk of court employee who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for the disclosure. However, knowingly allowing public access to microfilmed records containing restricted criminal history information may compromise this immunity. An argument can also be made that the immunity contained in [Admin. R. 9\(J\)](#) applies only to court records declared confidential under [Rules 9\(G\)](#) and [9\(H\)](#) and may not apply to records restricted by the statutes mentioned above.

The Indiana Office of Court Services (IOCS) recommends that the best framework to resolve the dilemma is through a local rule that establishes a protocol after thorough discussion of the options and public comment. Because the practices related to providing public access to old court records that have been batch-preserved vary greatly from county to county, a best practice that would have widespread application is difficult to recommend. However, given the clerk's duty to prevent public access to expunged case records, it is likely that increased supervision by the clerk over access to these records by a member of the public will be required in some counties.

Regarding orders restricting access to criminal case records (issued between July 1, 2012 and July 1, 2013) and orders of expungement (starting July 1, 2013) that pertain to criminal case records that have been batched-preserved using an un-editable medium, IOCS recommends that the clerk create a separate directory to catalog old cases that have recently become subject to an order requiring removal from public access. The directory should include the following minimum features:

- Editable only by the clerk and employees;
- Searchable by both the original cause number and the defendant's name;

¹ [I.C. 35-38-9](#) (effective July 1, 2013, amended provisions effective July 1, 2015) and I.C. 35-38-8 (effective July 1, 2012, repealed June 30, 2013)

- Contains a reference to the cause number under which restricted access or expungement was ordered;
- Specifically describes, for each bulk-preserved case:
 - the type of order issued;
 - any additional, case-specific provisions included in the order by the trial judge who presided over the Expungement/Restriction of Access matter; and
 - the degree of removal of the record from public access required by the order;

Type of order:	Typical requirements under order:
Restricted Access IC 35-38-8	<ul style="list-style-type: none"> • Order may not require any removal of court records from public access
Expungement pursuant to IC 35-38-9-1 (also known as “ Section 1 ” orders) <ul style="list-style-type: none"> • Applies to Orders issued after July 1, 2015² 	<ul style="list-style-type: none"> • Court record must be “permanently sealed” or “redacted” • Permanent removal from public access is required.
Expungement pursuant to IC 35-38-9-6 (also known as “ Section 6 ” orders)	<ul style="list-style-type: none"> • Court record must be “permanently sealed” or “redacted” • Removal from public access is required, however, a subsequent order could “re-open” the court record and reestablish public accessibility
Expungement pursuant to IC 35-38-9-7 (also known as “ Section 7 ” orders)	<ul style="list-style-type: none"> • Court record remains publicly accessible but must be “clearly marked expunged” <ul style="list-style-type: none"> ○ Clerk must ensure that all copies (paper or digital) created from batched-preserved records are clearly marked “Expunged” before they leave the clerk’s office.
Juvenile Expungement pursuant to IC 31-39-8	<ul style="list-style-type: none"> • Court record is either destroyed and/or given to the person to whom the record pertains.

Maintaining a directory of expungement orders that pertain to criminal case records that have been batch-preserved using an un-editable medium (e.g. microfilm) will allow a clerk to quickly determine how access to and reproduction of the preserved record should be handled.

IOCS welcomes feedback particularly regarding other approaches utilized to address this problem.

Last Modified 08/10/2016

² Prior to July 1, 2015, court records that were expunged pursuant to IC 35-38-9-1 (under “section 1 orders”), were not removed from public access. Some judges may have included this directive in their “section 1” orders and clerks should carefully review all section 1 orders issued before July 1, 2015 for such a provision.